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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERICKSON PRODUCTIONS, INC., *Plaintiff*, v. NAVISTAR, INC.; and IC BUS, LLC, *Defendants*.	Civil Case No. **COMPLAINT AND DEMAND FOR JURY TRIAL**

COMPLAINT

Plaintiff Erickson Productions, Inc. ("Erickson Productions") ("Plaintiff"), by and through undersigned counsel, hereby demands a trial by jury of all claims and issues so triable, and, as and for its Complaint for copyright infringement against Defendants Navistar, Inc. ("Navistar") and ICB BUS, LLC ("IC Bus") (collectively "Defendants"), hereby asserts and alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement against Defendants for unauthorized and infringing uses of Plaintiff's copyrighted photograph.

2. Plaintiff seeks damages and other relief related to Defendants' knowing and willful infringements of Plaintiff's copyrights in the original photographic work identified in Exhibit 1 that is the subject of this action.

3. Jim Erickson is a professional photographer who makes his living by taking and licensing photographs.

4. Jim Erickson created and owns the copyrights to the photographic work at issue in this action.

5. Plaintiff Erickson Productions, Inc., a California corporation, has an exclusive license covering all rights to photographs created by Jim Erickson, including the photographic work at issue in this action.

6. Erickson Productions' primary place of business is Petaluma, California.

7. Upon information and belief, Defendant Navistar is a is an American holding company, that owns and/or operates the truck manufacturing company, International, and the bus manufacturing company, IC Bus.

8. Upon information and belief, Defendant Navistar is registered in the state of Illinois.

9. Upon Information and belief, Defendant IC Bus is a bus manufacturer that produces buses for both school and commercial use.

10. Upon Information and belief, Defendant IC Bus is registered in the state of Illinois.

11. Upon information and belief, Defendants own and/or operate the website located at the URL https://www.icbus.com.

JURISDICTION AND VENUE

12. Jurisdiction for Plaintiff's claims lie with the United States District Court for the Northern District of California pursuant to the Copyright Act of 1976, 17 U.S.C. §§101, *et seq.*; 28 U.S.C. § 1331 (conferring original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States"), and 28 U.S.C. § 1338(a) (conferring original jurisdiction over claims arising under any act of Congress relating to copyrights).

13. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) since a substantial portion of the alleged misconduct by Defendants giving rise to the claims asserted herein occurred in this District and 28 U.S.C. § 1400(a) since the Defendants may be found in this District.

14. This Court has personal jurisdiction over the Defendants.

15. Upon information and belief, Defendants conduct substantial and ongoing business in the state of California, including publishing marketing materials on the infringing website that specifically target California consumers.

16. Upon information and belief, Defendants conduct substantial and ongoing business in the state of California, including entering into marketing and sales agreements with local bus retailers and conducting sales through numerous local IC Bus dealers throughout the state.

17. Upon information and belief, Defendants have made extensive sales in California and used the unauthorized copy of Plaintiff's photograph on their website to market their products and facilitate those sales in California.

18. Defendants contracted with an advertising agency, Fathom Communications/DDB Chicago ("Fathom/DDB"), to acquire a limited license from Plaintiff related to the photograph at issue here. On Defendants' behalf and acting as their agent, Fathom/DDB did solicit business from Erickson in California and did purchase a limited license from Erickson in California. Fathom/DDB was aware at all times during these transactions that Erickson was located in

California and, therefore, it was aware it was conducting business, on behalf of Defendants and as their agent, in California.

19. Defendants published and displayed Plaintiff's photo on the IC Bus website, which Defendants use to solicit business from customers and investors in California.

20. Defendants infringed Plaintiff's copyrights in California, including by publishing and displaying Plaintiff's photo on the IC Bus website that was published and consumed in California.

FACTUAL ALLEGATIONS

21. On or about March 13, 2013, Defendants' advertising agency, Fathom/DDB, acting on behalf of Defendants and as their agent, contracted with Plaintiff to purchase a limited license involving three of Plaintiff's copyrighted photographs, including the photograph at issue here identified in Exhibit 1 (the "Photograph").

22. The license expressly stated that all rights and permission to use Plaintiff's Photograph expired on March 18, 2014.

23. Defendants thus knew and had actual knowledge of the limits of their license, and/or they had constructive knowledge due to the fact that Fathom/DDB was Defendants' agent.

24. Prior to the expiration of the license, Plaintiff contacted Fathom/DDB to remind it of the impending expiration date.

25. Defendants thus knew and had actual knowledge that their license was set to expire, and/or they had constructive knowledge due to the fact that Fathom/DDB was Defendants' agent.

26. Nevertheless, Defendants continued to use, publish, and display the Photograph well beyond the expiration of the license without permission or authorization.

27. Also included in Exhibit 1 are true and correct copies of screenshots of Defendants' website taken on October 3, 2016.

28. Upon information and belief, Defendants' use of Plaintiff's photographs was not limited to publishing the photos on Defendants' website, but Plaintiff is not capable of determine the full scope of use by Defendants.

29. Erickson is not yet able to determine the full scope of Defendants' unauthorized use of Erickson's copyrighted works because the relevant usage information remains in Defendants' sole possession.

30. Erickson's copyrights in the Photograph are registered with the Copyright Office under Registration VA 1-637-849, with an effective date prior to Defendants' infringement.

COUNT I
COPYRIGHT INFRINGEMENT

31. Plaintiff repeats and re-alleges each allegation set forth above as if set forth fully herein.

32. The conduct by Defendants alleged herein infringed Plaintiff's exclusive rights in the Photograph in violation of the U.S. Copyright Act, 17 U.S.C. § 101, *et seq*.

33. Defendants' infringements were willful, including because Defendants had actual and/or constructive knowledge of the limits of their license and thus the violation was knowing and/or reckless.

34. Defendants' infringement caused Plaintiff significant injuries, damages, and losses in amounts to be determined at trial.

35. Erickson's copyrights in the photograph at issue in this action were registered with the United States Copyright Office prior to Defendants' infringements.

36. Plaintiff seeks all damages recoverable under the Copyright Act, including statutory or actual damages, including Defendants' profit attributable to the infringements, and damages suffered as a result of the lack of compensation, credit, and attribution and from any diminution in the value of Plaintiff's copyrighted work.

37. Plaintiff also seeks all attorneys' fees and any other costs incurred in pursuing and litigating this matter.

WHEREFORE, Plaintiff respectfully prays for judgment on its behalf and for the following relief:

1. A trial by jury of all claims and issue so triable;

2. A permanent injunction against Defendants from copying, displaying, distributing, advertising, promoting, and/or exploiting in any manner the copyrighted work identified herein, and requiring Defendants to deliver to the Court for destruction or other appropriate disposition all relevant materials, including digital files of Plaintiff's photograph and all copies of the infringing materials described in this complaint that are in the control or possession or custody of Defendants;

3. All allowable damages under the Copyright Act, including, but not limited to, statutory or actual damages, including damages incurred as a result of Plaintiff's loss of licensing revenue and Defendants' profits attributable to infringements, and damages suffered as a result of the lack of credit and attribution;

4. Plaintiff's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized under law, and attorneys' fees incurred in pursuing and litigating this matter;

5. Any other relief authorized by law, including punitive and/or exemplary damages; and

6. For such other and further relief as the Court deems just and proper.

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Dated: December 16, 2016

Respectfully submitted,

/s/ Kevin McCulloch

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